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DEVISES TO "CHILDREN"

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Preliminary Statement: Hayes, *Conveyancing*,[1] says: "If A. conveyed, at the common law, to the 'children' of B., who had no child then in being, the conveyance was simply void." No after-born child could take, owing to the gap in the seisin between the delivery of the deed and his birth. This gap was contrary to common-law principles.

Coke, *Littleton* 9a: "B. having divers sonnes and daughters, A. giveth lands to B. *et liberis suis, et a lour heires*, the father and all his children do take a fee simple joyntly by force of these words (their heires); but if he had no childe at the time of the feoffment, the childe borne afterwards shall not take."

Sheppard's *Touchstone*, *436: "If one devise his land to the children of I. S. by this devise the children that I. S. hath at the time of the devise, or at the most the children that I. S. hath at the time of the death of the testator, and not any of them that shall be born after his death, shall take."

In Coke's illustration the after-born child is excluded because the transfer being apparently by common-law conveyance he would take in defeasance of prior interests. Such a gap in estates was against mediaeval public policy.[2]

In Sheppard's illustration the after-born child is not defeated by any rule of law. The case being one of a devise, the shifting interest of the after-born child in defeasance of the prior estates to brothers and sisters—while not permitted at common law—was good under the Statute of Wills. Therefore a rule of construction based upon the presumed intent of the testator must operate to eliminate him.

[1] (5th ed. 1840) 119. See Kales, *Estates and Future Interests* (2d ed. 1920) secs. 26, 473.

[2] Kales, *loc. cit.*

These three extracts serve as a good introduction to the forces operating in the definition of gifts to classes by way of deeds and devises of real estate.

Where there is a devise of land to the children of A, and A has no children at the testator's death, but some are born later: In spite of some ill-reported remarks in *Scatterwood v. Edge*,[3] all children of A whenever born are held to take.[4] The result may be supported upon the theory that under such circumstances the natural meaning of such words as "A's children whenever born", and that since the Statute of Wills (1540) such a springing interest is good.

Where there is a devise of land to the children of A and A has some children alive at the date of the will some of whom die before the testator: Here those alive at the testator's death take the land to the exclusion of those who died before that time.[5] No doubt these decisions are based on the view that the testator means children of A alive at his death. Accordingly if A has no children at the date of the will, but some are born to him before the testator's death, the latter will take the land.

Where there is a devise of land to the children of A and A has some children at the testator's death and some born later: At common law the shifting interest to the after-born children was bad. Furthermore, they might be excluded after the Statute of Wills either on the ground that no limitation capable of taking effect at common law shall be construed to take effect as an executory devise,[6] or upon the ground that the natural meaning of the words is children born at the testator's death.[7] The weight of authority excludes the afterborn children of A.[8]

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[3] (1699, K. B.) 1 Salk. 229.

[4] *Shepherd v. Ingram* (1764, Ch.) Ambl. 448 (residue of real and personal estate).

Upon the application of the Rule in Wild's Case (1599, K. B.) 6 Co. 16, where there is a devise to "A and his children", A having no children at the time of the will, see Kales, *supra* note 1, at secs. 561, 562.

If there be a conveyance by deed to the children of A, and A has no children at the date of delivery, the conveyance may be held void for uncertainty. See 2 Tiffany, *Real Property* (2d ed. 1920) 1595.

[5] *Stires v. Van Rensselaer* (1852, N. Y.) 2 Bradf. Surro. 172; *Robinson v. McDiarmid* (1882) 87 N. C. 455. The rule is the same in personal property. *Viner v. Francis* (1789) 2 Cox Ch. 190.

[6] Challis, *Real Property* (3d ed. 1887) *123.

[7] Theobald, *Wills* (7th ed. 1908) 310.

[8] *Singleton v. Gilbert* (1784) 1 Cox. Ch. 68; *Scott v. Harwood* (1821, Ch.) 5 Mad. 332; *semble*; *Wyman v. Johnson* (1900) 68 Ark. 369, 59 S. W. 250; *Wood v. McGuire* (1854) 15 Ga. 202; *Faloon v. Simshauser* (1889) 130 Ill. 649, 22 N. E. 835 (deed); *Biggs v. McCarty* (1882) 86 Ind. 352; *Loockerman v. McBlair* (1847, Md.) 6 Gill, 177; but see *Benson v. Wright* (1848) 4 Md. Ch. 278, where it does not appear whether the property was realty or personalty. *Coogler v. Crosby* (1911) 89 S. C. 508, 72 S. E. 149; *Wills v. Foltz* (1907) 61 W. Va. 262, 56 W. Va. 473. *Contra: Cook v. Cook*

Where there is a devise of land to A for life and then to the children of A who attain twenty-one: Here Mr. Kales has shown that as the testator is looking forward to a gift in the future he means, not only children of A living at his own death but all children of A attaining the given age no matter when.[9] In *Purefoy v. Rogers*,[10] however, Lord Hale said: "where a contingency is limited to depend on an estate of freehold which is capable of supporting a remainder, it shall never be construed to be an executory devise, but a contingent remainder only, and not otherwise." The result of a strict application of this rule in England is that, whether or not any of A's children have obtained a vested interest prior to his death, none of those reaching the required age after A's death may take.[11]

If, however, the testator has himself split the devise to A's children into two classes, one of which is to reach the age of twenty-one before A's death and the other one after A's death, the latter class takes by executory devise.[12] The Massachusetts court allowed all children of A to take although some reached the required age after A's death, and although the testator did not divide the gift.[13]

Contingent Remainder Acts. Thirteen states, as well as England, have complete contingent remainder acts.[14] No decisions involving facts similar to the case last supposed have been found which have arisen in England or those states since the passing

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(1706, Ch.) 2 Vern. 545; *Lynn v. Hall* (1897) 101 Ky. 738, 43 S. W. 402; *Goodridge v. Schafer* (1902) 24 Ky. L. R. 219, 68 S. W. 411.

Where the conveyance is to "the children of A born and to be born", and A has children at the execution of the deed and some born later, see Kales, *supra* note 1, at sec. 476.

[9] Kales, *supra* note 1, at sec. 99.

[10] (1681, K. B.) 2 Saund. 380, 388.

[11] *Festing v. Allen* (1843, Exch.) 12 Mees. & W. 279; *Rhodes v. Whitehead* (1865, Ch.) 2 Dr. & Sm. 532; Jarman, *Wills* (5th ed. 1881) 832; *Blackman v. Fysh* [1892] 3 Ch. Div. 209, 223.

[12] *In re Lechmere and Lloyd* (1881) 18 Ch. Div. 524; *Dean v. Dean* (1891) 3 Ch. Div. 150. *Cf. White v. Summers* [1908] 2 Ch. Div. 256.

[13] *Simonds v. Simonds* (1908) 199 Mass. 552, 85 N. E. 860. In Missouri the same result, giving full effect to the intention of the testator, was reached where the provisions were to A for life, remainder to the children of B. *Buckner v. Buckner* (1914) 255 Mo. 371, 164 S. W. 513. *Cf. Hayward v. Spaulding* (1908) 75 N. H. 92, 71 Atl. 219. But see *Archer v. Jacobs* (1904) 125 Iowa, 467, 101 N. W. 195.

[14] Kales, *supra* note 1, at sec. 106.

In England a contingent remainder act was passed in 1877, 40 & 41 Vict. c. 33. "A doubt has long existed, and still remains, whether the act of 1877 applied where the remainder was to the children of a life tenant who reached twenty-one and one child had reached twenty-one before the termination of a life estate and others were *in esse* who might do so afterwards. Williams on Seisin, 205; Jarman on Wills, (6th ed. by Sweet), 1445; Vaizey, Law of Settlements, 1164, 1165. The point was left undecided in *In re* Robson [1916] 1 Ch. 116." Kales, *loc. cit.*

of these acts,[15] with the exception of the Kentucky case next to be noticed.

In Kentucky it is provided by statute that: "A contingent remainder shall, in no case, fail for the want of a particular estate to support it." [16] In *Laughlin v. Elliott*,[17] a deed of real and personal estate reserved a life estate to the grantor, thereafter gave a life estate in the grantee, and after the death of the latter divided the property between the grandchildren of the grantor. The court held that the final gift, including as it did after-born grandchildren, was too remote. Here in construction the testator's intent was given free play, untrammelled by any rules of law.

Where the future interests to the children are equitable. If the limitations are in trust for A for life, and after his death upon trust to convey the land to such of the children of A as attain twenty-one, no rule of destructibility applies. The natural meaning of the words in the gift to the children is unhampered by any rules of law. The decisions admitting those of the children attaining twenty-one after the death of A, as well as those who have attained that age before A's death, show conclusively that the words properly interpreted mean all A's children who satisfy the condition, no matter when.[18]

Suppose there is a future gift with no intervening interest. In *Ballard v. Ballard*[19] there was a devise of land to the testator's two sons and daughter for ten years and after the expiration of the ten years to his grandchildren by them. The case arose at common law before the passage of any Massachusetts statute in regard to contingent remainders.[20] Some grandchildren were born before the testator died, some during the ten year period, and one after that period. The court did not discuss the rule in *Purefoy v. Rogers*.[21] The limitations to unborn grandchildren were incapable of taking effect as contingent remainders because

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[15] The case was noted but not passed on in *In re Robson* [1916] 1 Ch. Div. 116, 121–122.

[16] Ky. Sts. 1922, sec. 2346.

[17] (1924) 202 Ky. 433, 259 S. W. 1031.

[18] *Astley v. Micklethwait* (1880) 15 Ch. Div. 59; *In re Freme* [1891] 3 Ch. Div. 167; *In re Robson, supra* note 15; 2 Jarman, *Wills* (6th ed. 1910) 1691–1692; Challis, *supra* note 6, at 122; *Taylor v. Crosson* (1916) 11 Del. Ch. 145. *Cf. Quinlan v. Wickman* (1908) 233 Ill. 39 (mixed fund); *Aldendifer v. Wylie* (1923) 306 Ill. 426 (mixed fund); *Ward v. Van der Loeff* [1924] A. C. 653 (mixed fund).

[19] (1836, Mass.) 18 Pick. 41.

[20] Rev. Sts. 1836, c. 59, Section 7; Acts 1916, c. 108.

[21] *Op. cit. supra* note 10, "where a contingency is limited to depend on an estate of freehold which is capable of supporting a remainder, it shall never be construed to be an executory devise, but a contingent remainder only, and not otherwise." This rule has been expressed more broadly as follows: . . . "it is a certain principle of law, that, wherever such a construction can be put upon a limitation, as that it may take effect by

there was no freehold to support them. Hence they were good as executory devises.[22] The court admitted the child born after the ten year period to share with the other members of the class. No rules of law defeating intent influenced the decision. Owing to the fact that the particular estate was a term for years no special significance can be given to that interest, and the future interests of the grandchildren could be dealt with irrespective of it. The result was that children "whenever born" was held to be the natural meaning of the words.

In *Black v. Black*[23] the testator provided that the real estate should be held by the executors until his youngest grandchild should attain twenty-one, when the land should be sold and the proceeds and accumulations be divided among his grandchildren then alive. The youngest of the grandchildren alive at the testator's death reached twenty-one. Some of the testator's children were then still living. It was contended that the time for division had arrived. The court held, however, that the distribution of the property must be postponed until the youngest grandchild of the testator that might still be born attained twenty-one.

Certain Cases where the Subject Matter was Personalty: Cases arising under the disposition of personal property to members of a class seldom throw clear light upon the actual intent of the testator. The character of the property requires that no further members of the class be admitted to share in the principal after the first period of division.[24] This rule is one which frequently defeats the intent of testators.[25] Two types of cases are, however, of distinct value in determining the probable thoughts of most testators, whether they are disposing of real or personal property.

The first type arises from a comparison of *Gilmore v. Severn*,[26] and *Davidson v. Dallas*.[27] In *Gilmore v. Severn* there was a bequest of 350 £ to the children of the testator's sister Jane to be paid to them at twenty-one in equal shares; and, in case any of them should die under twenty-one, their shares to go to the survivors. At the testator's death Jane had two children. Another child was born later. Sir Lloyd Kenyon was of the opinion

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way of remainder, it shall never take place as a springing use, or executory devise." *Carwardine v. Carwardine* (1758, Ch.) 1 Eden, *27, *34.

[22] *Gore v. Gore* (1722, K. B.) 2 P. Wms. 28.

[23] (1904) 21 Sup. Ct. Cape of Good Hope, 555. And see *Boughton v. Boughton* (1848) 1 H. L. Cas. *406 (mixed fund); *Webber v. Jones* (1900) 94 Me. 429, 47 Atl. 903 (mixed fund); see cases cited *infra* note 38.

[24] The applications of this rule are fully described in Kales, *supra* note 1 at secs. 563–570; Hawkins, *Wills* (2d ed. 1912) 92–105.

[25] 2 Jarman, *supra* note 18, at 1665.

[26] (1785) 1 Bro. Ch. *582. *Cf. Oppenheim v. Henry* (1853, Ch.) 10 Hare, *441.

[27] (1808, Ch.) 14 Ves. 576.

that the third child born during the infancy of the other two was entitled to share.

In *Davidson v. Dallas* there was a devise of 3000 £ to the children of the testator's brother Robert to be equally divided among them, and, if any of them should die before twenty-one, his share was to go to the survivors. At the testator's death there were six children of his brother, the eldest of whom was fourteen years of age. Since his death two other children were born. Lord Eldon decreed that those children only of the testator's brother who were living at the death of the testator were entitled to share. In order to protect the gift to survivors the principal of the fund could not be handed over to the guardians of these six at the testator's death, but must be retained in the hands of fiduciaries. It is, therefore, hard to see why children born after the testator's death and until the eldest reached twenty-one should not have been admitted as much in *Davidson v. Dallas* as in *Gilmore v. Severn.*[28]

The following distinction is suggested as the only one that can be drawn between the two cases. If "children of A" means children at the death of the testator, then *Davidson v. Dallas* stands firmly on that ground, and there is no rule of convenience to disturb that result. On the other hand, where, as in *Gilmore v. Severn,* the testator has imported into the gift by the words "to be paid to them . . . as they should respectively attain twenty-one," an element of futurity, it may be fairly said that he meant to include all after-born children, and this meaning is cut down by the rule of convenience to include only those who compose the class at the first period of division. *Davidson v. Dallas,* then, would seem to be a solid decision that "children" means children alive at the testator's death, if there be any such children.[29]

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[28] 2 Jarman, *op. cit. supra* note 11, at 1010, note 5: "But as the gift over necessarily suspends the distribution until the eldest attains twenty-one (as to which, however, see Fawkes v. Grey, 18 Ves. 131), ought not the children born in the interval to have been let in, seeing that these rules always aim at including as many objects as possible?"

[29] But see Hawkins, *supra* note 24, at 90: "It might be supposed that a gift to the children of a person simpliciter, would include all the children he might have, whenever coming into existence; but the testator is considered to intend the objects of his bounty to be ascertained at as early a period as possible; and it may be laid down as a general rule (qualified by the other rules which follow in this chapter) that, a devise or bequest to the children of A., or of the testator, means, *prima facie,* the children *in existence at the testator's death*: provided there are such children then in existence."

This rule is described as a rule of convenience in Theobald, *op. cit. supra* note 7, at 306. See *In re Powell* [1898] 1 Ch. 227, 228. 2 Jarman, *op. cit. supra* note 18, at 1665. "The rule usually defeats the intention of testators, and the tendency of the Courts is not to apply it unless it is necessary."

The second type of case that is instructive is illustrated by three cases on gifts of income.

In re Wenmoth's Estate[30] presented the following problem: There was a bequest of residue of personal property upon trust to apply income between the testator's grandchildren on attaining the age of twenty-one for life. On the death of any grandchild (except the last survivor) dying with issue, such grandchild's share of income should be paid to his children, who being sons should attain twenty-one or being daughters should attain that age or marry. After the death of the last surviving grandchild the residue was to be divided equally among the testator's then living great grandchildren who attained twenty-one. The testator's son had eleven children, of whom eight were alive at the time of suit. Of these eight five were born in the testator's lifetime, and the eldest became twenty-one in 1883. Two were born after the testator's death and before the eldest grandchild attained twenty-one. One was born in 1887. The question raised was, to what grandchildren did the gift of the income apply? Chitty, J., held that any child at any time attaining twenty-one was entitled to a share of the income. He distinguished a gift of corpus where there is but one period of division from the distribution of income where the division is periodical; and said that each member of the class, as soon as he became entitled, took his share of the income, and there was no reason why the rule should be applied beyond each periodical payment. The decree gave to the three grandchildren then of age each one-eighth of the income, and reserved the other five-eighths for the remaining five grandchildren in accordance with the terms of the will for investment, maintenance and advancement.[31]

In re Powell[32] is as follows: The testator gave all his residuary estate to trustees upon trust to divide into three equal portions and to pay one-third of the income of his estate equally between the children of his sister during their lives, and after their deaths to divide one-third part of the estate equally among their children; but if they should all die without having children, then over. The testator died in 1879. His sister, then over eighty, died in 1888. She had several children, one of whom died leaving children. The question was whether the gift to the children of the children of his sister was void for remoteness. Mr. Justice Kekewich held it valid, because the gift of the income was to children living at the testator's death and did not, although it was a gift of income only, include objects born later. The learned Judge said that the natural meaning of the word "children" was children alive at the testator's death, citing Hawkins on Wills.[33]

[30] (1887) 37 Ch. Div. 266.

[31] See *In re Stephens* [1904] 1 Ch. Div. 322, 330.

[32] *Supra* note 29.

[33] *Supra* note 29.

He distinguished *In re Wenmoth's Estate*[34] on the ground that there the gift was to children at the given age, in which case, if the gift were of the corpus, the rule of convenience was properly applicable to cut down all children to those existing at the first period of division, and it was this rule that Mr. Justice Chitty refused to extend to a gift of income. Mr. Justice Kekewich said, on page 231: "I do not think it occurred to him to consider in any way whether it would be right to depart from the rule as to children being ascertained at the testator's death because they were only interested in income, . . ." [35]

In re Carter in the Court of Appeal of New Zealand[36] contains a discussion of both decisions. The testator bequeathed his business of sheep-farming upon trust to pay the remainder of the income, after payment of annuities, to the grandchildren of his late half-brother John Walker and the grandchildren of his half-sister Elizabeth Hogg in equal shares. One question raised by the request for instructions was whether two grandchildren of John Walker who were born after the death of the testator were entitled to interests under the will.

In the Supreme Court, Stout, C. J., held that *In re Powell* controlled, that *In re Wenmoth's Estate* was to be distinguished upon the ground that there the testator had imported an element of futurity into the gift by designating that the objects thereof were to receive their legacies of income at twenty-one.

The case was taken to the Court of Appeal. There all four judges agreed that there was sufficient special context in the whole will to warrant a reversal of the Chief Justice and an admission of the two younger grandchildren to a share in the income; but all four gave full opinions that *In re Powell* was wrong[37] and that *In re Wenmoth's Estate* represented the better

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[34] *Supra* note 30.

[35] See Gray, *Rule against Perpetuities* (3d ed. 1915) sec. 641.

[36] (1911) 30 N. Z. L. R. 707.

[37] Mr. Justice Edwards in *In re Carter, supra* note 36 at 724–725, justifies *In re Powell* solely upon the ground that there is an ambiguity in the phrase "the children of A" and even in the case of income the Rule against Perpetuities which was in issue in that case might serve to restrict the first gift to the children alive at the testator's death in order to save the gift over. It was upon this ground that Chitty, J., in *In re Wenmoth's Estate* put aside, as not in point, *Elliott v. Elliott* (1841, Ch.) 12 Sim. 276, and *In re Coppard's Estate* (1887) 35 Ch. Div. 350. See *In re Wenmoth's Estate, supra* note 30, at 270–271. Chitty, J., declines to decide the question of remoteness of the interests of the great-grandchildren as being premature. But might it not have affected the construction of the gift to the grandchildren? See Gray, *loc. cit. supra* note 35.

In a few other cases of gifts of personal property the rule of convenience is not applied. If there is a gift to the children of A and there are no children of A alive at the testator's death, all children of A, not merely the first born, are admitted. *Weld v. Bradbury* (1715, Ch.) 2 Vern. 705; *Armitage v. Williams* (1859, Ch.) 27 Beav. 346. If there is a gift to A

view in all cases of gifts to children whether the testator had postponed payment or not. The effect of this dictum is that the natural meaning of a gift "to children" is "children whenever born," that this meaning is given full play where the gift is of income or where there are no children alive at the testator's death but is restricted by the rule of convenience in those cases where there are children alive when the will takes effect.

Can this dictum, supported only by *In re Wenmoth's Estate*, which is in fact distinguishable from *In re Powell*, stand against the combined effect of *Gilmore v. Severn* and *Davidson v. Dallas* together with *In re Powell?* It is submitted that it cannot, and that the primary meaning based upon the expectations of the majority of testators of a gift to children where some are in existence at the death of the testator is "children only who are then alive".

Where there is a gift to the children of A when the youngest attains twenty-one, or to grandchildren when the youngest attains a certain age. Does "youngest" here mean the youngest of the class in existence at the testator's death, or the youngest of the members of a class living at any particular time, or the youngest ever born? The weight of authority tends to establish the last meaning, although it is by no means clear in many of the cases whether the court meant to distinguish between the second and the last interpretations.[38] That it refers to children or grandchildren whenever born seems the most natural meaning when the testator has imported an element of futurity into the gift by the postponement until a certain age is reached. The second meaning, while doubtless to be favored from the point of view of convenience, is not a natural construction where the will is so simply expressed.

SUMMARY

The following propositions are submitted with regard to the testator's meaning in a devise of real estate to the children of A.

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for life and then to the children of B, and at A's death B, though living, has no children, all children of B, not merely the first born, are admitted. Theobald, *supra* note 7, at 307; 2 Jarman, *supra* note 18, at 1692.

[38] *Estate of Van Wyck* (1921) 185 Calif. 49, 196 Pac. 50; *Aldendifer v. Wylie, supra* note 18; *Caywood v. Jones* (1908, Ky. C. A.) 32 Ky. L. Rep. 1302, 108 S. W. 888; *Webber v. Jones* (1900) 94 Me. 429, 47 Atl. 903; *Fosdick v. Fosdick* (1863, Mass.) 6 Allen, 41; *Kates v. Walker* (1912) 82 N. J. L. 157, 82 Atl. 301; *McLaughlin v. Yingling* (1923) 90 Okla. 159, 213 Pac. 552; *Hughes v. Hughes* (1791) 3 Bro. Ch. 352; s. c. 434; *Mainwaring v. Beevor* (1849, Ch.) 8 Hare, 44; *Gooch v. Gooch* (1853, Ch.) 3 De G. M. & G. 366; *Armitage v. Williams, supra* note 37; *In re Pilkington* (1892, Ireland) L. R. 29 Ch. Div. 370; *Will of Wilkie* (1901) 19 N. Z. 581; *In re Stevens* [1912] Vict. L. R. 194, [1922] Vict. L. R. 771, and [1923] Vict. L. R. 584. To the same effect see *Kales, supra* note 1 at sec. 569. For a comment on *In re Stevens* see (1924) 37 HARV. L. REV. 637.

1. "To the children of A", there being none in existence at the time of the testator's death, means to all the children of A, whenever born.

2. If there are children alive at the testator's death, the natural meaning of his words is, those children whom he may be assumed to know, as distinguished from those whom he does not; and that those alive at his death alone take.

3. "To A for life, remainder to A's children who attain twenty-one". Here the testator has projected the gift into the future in two ways, (a) by postponing it until after A's death, (b) by postponing it until the children attain twenty-one. He therefore means to include all children whenever born who attain the given age.

4. "To the children of A who attain twenty-one". Here an element of futurity is incorporated into the definition of the devises; and hence all children attaining the age are meant.

5. "To A for life and then to the children of B". A more difficult case is here presented. The testator has not incorporated into the definition of the legatees an element of futurity. From that point of view it might be argued that the situation closely resembles an immediate devise to the children of A. Hence, if there are children of B born before A's death, those born afterwards are not intended to take; whereas, if B has had no children by that time, all are admitted, whenever born. It is submitted, however, that the testator is looking to the future. He can not be assumed to have preferred one class which he knows to another class with which he is unacquainted, as in the case of an immediate gift; and that, therefore, all children of B whenever born are to share, irrespective of the state of B's family at A's death.[39] The same result should be reached in a devise "to the children of A ten years hence".

Contra: Seitz v. Faversham (1912) 205 N. Y. 197; *semble: Toher v. Crounse* (1907, N. Y. Sup. Ct. Spec. T.) 57 Misc. 252, *aff'd*, without opinion, (1908, 3d Dept.) 127 App. Div. 934; *Cogan v. McCabe* (1898, N. Y. Spec. T.) 23 Misc. 739. The New York cases were influenced by the New York statute of perpetuities. See *Simpson v. Cook* (1877) 24 Minn. 180; *Kevern v. Williams* (1832, Ch.) 5 Sim. 171; *Elliott v. Elliott* (1841, Ch.) 12 Sim. 276; *In re Coppard's Estate* (1887) 35 Ch. Div. 350; Gray, *op. cit. supra* note 35, at secs. 638–640.

[39] If a child of B is born before A's death, his interest becomes vested, and in the event of his predeceasing A, passes to his heirs. Kales, *op. cit. supra note* 1, at sec. 565.